FILED
APR 28 1900
JAMES H. McKENNEY,
Clerk.

12 Orig.

IN THE

# Supreme Court of the United States.

## PETITION OF THE UNION STEAM-BOAT COMPANY.

## Petition for a Writ of Mandamus.

C. E. KREMER,
H. C. WISNER,
F. C. HARVEY,
W. O. JOHNSON,
*Proctors for Petitioners.*

Geo. Hrnstein & Co., Printers, Chicago.

IN THE

# Supreme Court of the United States.

***Petition of the Union Steamboat Company for a writ of mandamus directed to the District Court of the United States for the Eastern District of Michigan, to set aside a decree in the case of Erie & Western Transportation Company vs. The Propellor "New York," The Union Steamboat Company, Claimant.***

*To the Honorable Judges of the Supreme Court of the United States:*

The Union Steamboat Company, the petitioner, respectfully shows to this court as follows:

I. Your petitioner, the Union Steamboat Company, is a corporation and was at the time of the collision between the propellers "Conemaugh" and "New York" sole owner of the latter steamer.

II. That at the October Term, 1899, of this court, to wit, on the 19th day of October, 1899, the cause of the Union Steamboat Company, claimant of the propeller "New York," appellant, and the Erie & Western Transportation Company, libelant, *et al.*, was

heard, and on the 20th day of October, 1899, this court filed its opinion in said cause.

III. That on the 22d day of January, 1900, this court issued its mandate, directed to the District Court of the United States for the Eastern District of Michigan, to enter a decree in conformity with the opinion of this court, as will more fully appear from a certified copy of said mandate, attached hereto, marked "Exhibit A" and made a part of this petition.

IV That thereupon and on the 17th day of March, 1900, proctors representing the libelants, intervenors and claimants all of the parties interested in said suit, entered into a stipulation as to the several amounts constituting the damages in said cause, a certified copy of which stipulation is hereto attached, marked "Exhibit B," and made a part of this petition.

V. That on the 10th day of March, 1900, the said cause coming on to be heard in the said District Court, upon the decree to be entered in pursuance of the mandate above referred to, the petitioner submitted a proposed decree, and prayed that it might be entered in pursuance of said mandate, a certified copy of which is hereto attached, marked "Exhibit C," and made a part of this petition.

VI. That at the same time there was submitted by the said Erie & Western Transportation Company, on behalf of the libelants and intervenors in said cause, representing the Propeller Conemaugh and her cargo, a draft of a decree, which they prayed might be entered, a certified copy of which is hereto attached and marked "Exhibit D," and made a part of this petition.

And the court after hearing the arguments of the proctors, and on the 24th day of March, 1900, entered the last above named decree marked "Exhibit D," as the decree of the court, in pursuance of the provisions of the mandate above referred to.

VII. That the mandate in this cause provides for interest upon the various sums to be paid, in words as follows:

"With interest at the same rate per annum that "decrees bear in the courts of the State of Michigan."

That the District Court in pursuance of the said provision of the said mandate, directed that the various sums provided to be paid in said decree should bear interest at the rate of seven per cent. per annum, instead of 5 per cent. per annum, which it was contended on behalf the Union Steamboat Company, this petitioner, was the rate of interest that decrees bear in the courts of the State of Michigan.

VIII. That the said District Court further decreed, as will appear from "Exhibit D," that the libelant recover of the Union Steamboat Company one-half of all the costs in said cause in the District Court, and in the United States Circuit Court of Appeals for the Sixth Circuit, although it appears from the certified copy of the mandate issued by the said Circuit Court of Appeals for the Sixth Circuit to the said District Court in this cause under date of the 11th day of February, 1898, that the said Union Steamboat Company was the appellant in said Circuit Court of Appeals, and had paid all of the disbursements incurred upon its appeal from the District Court to the said Circuit Court of Appeals, as will more fully appear from a certified copy of the said mandate hereto attached marked "Exhibit E," and made a part of this petition.

IX. That the said District Court refused to permit the said Union Steamboat Company to recoup any sum that it might pay to the intervenors and owners of the cargo of the Steamer "Conemaugh" beyond a moiety thereof, against any sums that were due from the said Union Steamboat Company to the libelant for damages sustained by the Steamer "Conemaugh" and the owners of the cargo represented by the owner of the "Conemaugh" (and not represented by the intervenors), so that it was compelled to pay out of the total damage of $74,319.49, the sum of $52,788.77, instead of $32,817.94, being 76.5 per cent. of the total damage instead of 50 per cent. thereof.

X. That all of the damages arising out of said collision as shown by "Exhibit B" are fully provided for in the draft of the decree offered by this petitioner, and so distributed that the libelant as owner of the steamer "Conemaugh" and the petitioner as owner of the steamer "New York," each bear one-half of all the said damages, which we contend is in conformity with the mandate, and the opinion of this court referred to therein.

Wherefore, your petitioner prays that this Honorable Court will be pleased to grant the writ of *mandamus* in this case to the District Court of the United States for the Eastern District of Michigan, commanding it to set aside the decree entered in the said cause on the 24th day of March, 1900, and enter a decree dividing the damages agreed to equally so that this petitioner would not be decreed to pay more than one-half of the total damages arising out of the said collision, with interest thereon at a rate not exceeding the rate of 5 per cent. per annum from the 3d day of July,

1896, and that this petitioner be decreed to pay not more than one-half of the costs in the said Circuit Court of Appeals, and for such proceedings as shall seem just.

UNION STEAMBOAT COMPANY,
By Thomas T. Morford
Genl. agent

UNITED STATES OF AMERICA,
STATE OF Illinois
COUNTY OF Cook

Thomas T. Morford being duly sworn, deposes and says that he is the agent of the petitioner herein, The Union Steamboat Company; that the said petitioner is a corporation; that deponent has read the foregoing petition and that the same is true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes it to be true. Thomas T. Morford

Subscribed and sworn to before me this 11th day of April, 1900.

Robert J. Tolonie
Notary Public

Notarial Seal

We hereby certify that we have examined the fore going petition, and in our opinion the petition is well founded, and the case is one in which the prayer of the petition should be granted.

"EXHIBIT A."

UNITED STATES OF AMERICA } ss.

*The President of the United States of America, to the Honorable, the Judge of the District Court of the United States for the Eastern District of Michigan:*

GREETING—Whereas, lately in the United States Circuit Court of Appeals for the Sixth Circuit, in a cause between the Union Steamboat Company, claimant of the propeller New York, appellant, and the Erie and Western Transportation Company, libellant, and the British and Foreign Insurance Company, Limited; Insurance Company of North America; The Union Marine Insurance Company, and the Marine Insurance Company, Limited, intervening petitioners, appellees, wherein the decree of the said Circuit Court of Appeals entered in said cause on the 5th day of October, A. D. 1897, is in the following words: This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration, whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said District Court in said cause be and the same is hereby reversed with costs, and the cause is remanded to the court whence it came, with directions to dismiss the libel of the owners of the Conemaugh, and the petition of the intervening insurance companies, and to enter a decree *in personam* in favor of the owners of the New York against the owners of the Conemaugh for the agreed damage to the New

York," as by inspection of the transcript of the record of the said United States Circuit Court of Appeals, which was brought into the Supreme Court of the United States by virtue of a writ of *certiorari*, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And, whereas, in the present term of October, in the year of our Lord one thousand eight hundred and ninety-nine, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this court that the decree of the said United States Circuit Court of Appeals in the cause be and the same is hereby reversed; the claimants of the Conemaugh and the claimant of the New York each to pay one half of all costs in this cause.

And that the said Erie & Western Transportation Company recover against the Union Steamboat Com $276.75 for one half of the costs herein expended and have execution therefor.

And it is further ordered that this cause be and the same is hereby remanded to the District Court of the United States for the Eastern District of Michigan, with direction to enter a decree in conformity with the opinion of this court, with interest at the same rate per annum that decrees bear in the courts of the State of Michigan.

DEC. 7th, 1899.

You therefore are hereby commanded that such execution and further proceedings be had in said cause in conformity with the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of *certiorari* notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22d day of January, in the year of our Lord, one thousand nine hundred.

[SEAL] JAMES H. MCKENNEY,
*Clerk of the Supreme Court of the United States.*

I, Darius J. Davison, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the foregoing is a true copy of a mandate of the Supreme Court of the United States, filed in my office, on the 24th day of January, 1900, and of the whole thereof, and that a decree in accordance with said mandate was entered in said District Court on the 24th day of March, 1898, at the City of Detroit in said District.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Detroit in said District, this 27th day of March, 1900.

D. J. DAVISON,
[SEAL] *Clerk.*

"Exhibit B."

The District Court of the United States for the Eastern District of Michigan.

| | |
|---|---|
| The Erie and Western Transportation Company, Owner of the Propeller Conemaugh,<br>*Libellant.*<br>The British and Foreign Marine Insurance Company, Limited,<br>The Insurance Company of North America,<br>The Union Marine Insurance Company, and<br>The Marine Insurance Company, Limited,<br>*Intervenors.*<br>*vs.*<br>The Propeller "New York," The Union Steamboat Company,<br>*Claimant.* | *In Admiralty.* |

It is hereby stipulated that the losses sustained by the parties to this cause by the collision between the said Propellers Conemaugh and New York, with interest to July 3, 1896, shown by the record in said cause, are as follows:

| | |
|---|---|
| Erie and Western Transportation Company, Owners of Propeller Conemaugh..... | $30,508.46 |
| Erie and Western Transportation Company, Trustee for Underwriters on Cargo, other than intervenors..... | 19,627.67 |
| British and Foreign Marine Insurance Company, Limited..... | 2,421.84 |
| The Insurance Company of North America, | 7,950.09 |
| The Union Marine Insurance Company.... | 8,553.06 |

| | |
|---|---|
| The Marine Insurance Company, Limited, | 916.57 |
| Union Steamboat Company, Owners Propeller New York | 4,341.80 |
| Total losses, | $74,319.49 |

HARVEY D. GOULDER,
*Proctor for Libellant.*
F. H. CANFIELD,
G. L. CANFIELD,
*Proctors for Intervenors.*
CHAS. E. KREMER and
WISNER & HARVEY,
DATED, March 17, 1900. *Proctors for Claimant.*

I, Darius J. Davison, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the foregoing is a true copy of a stipulation in the above entitled cause, filed in my office on the 21st day of March, 1900, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said District, this 27th day of March, 1900.

[SEAL] D. J. DAVISON, *Clerk.*

"EXHIBIT C."

THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

| | |
|---|---|
| The Erie & Western Transportation Company, owner of the Propeller Conemaugh, *Libellant;* The British & Foreign Marine Insurance Company, Limited; The Insurance Company of North America; The Union Marine Insurance Company, and the Marine Insurance Company, Limited, *Intervenors,* vs. The Propellor "New York," The Union Steamboat Company, *Claimant.* | *In Admiralty.* |

On reading and filing the mandate of the Supreme Court in this cause, bearing date January 22, 1900, and in obedience to said mandate, and in accordance with the opinion of the Supreme Court herein, it is now ordered, adjudged and decreed that the said Propeller "CONEMAUGH" and the said Propeller "NEW YORK" were both at fault for the collision set forth in the pleadings in this cause, and that the damages resulting therefrom to the said libellant, the owners of the cargo of the Conemaugh and underwriters thereon, the intervening petitioners, and the claimant of the Propeller New York, be equally divided between the said Erie & Western Transportation Company and the said Union Steamboat Company.

It is further ordered, adjudged and decreed that the

damages resulting from said collision, together with interest thereon to July 3, 1896, amount to the sum of $74,319.49, and are payable to the following named, and in the following proportion, viz.:

| | |
|---|---|
| Union Steamboat Company, damage to New York | $ 4,341.80 |
| Erie & Western Trans. Co., damage to Conemaugh | 30,508.56 |
| Erie & Western Trans. Co., Trustee for owners of cargo and underwriters other than intervenors | 19,627.67 |
| British & Foreign Marine Ins. Co., Lim., Intervenors | 2,421.84 |
| Union Marine Insurance Company | 8,553.06 |
| Marine Insurance Company, Limited | 916.57 |
| Insurance Company of North America | 7,950.09 |

And it appearing that the above named intervenors were insurers of portions of the cargo of the Conemaugh and that they have suffered damages on account of said collision as follows, viz:

| | |
|---|---|
| British & Foreign Insurance Co | $2,421.84 |
| Union Marine Insurance Company | 8,553.06 |
| Marine Insurance Company, Limited | 916.57 |
| Insurance Company of North America | 7,950.09 |

It is further ordered, adjudged and decreed that the said intervenors severally recover from the said Union Steamboat Company and the American Surety Company, its surety, their several damages aforesaid, amounting in all to the sum of $19,841.56, with interest thereon at the rate of 5 per cent per annum from the 3d day of July, 1896, until paid; and that the said Union Steamboat Company and the American Surety Company pay into court, or to the proctors for the intervenors, the damages and interest aforesaid, and that in default thereof, the said intervenors have executions therefor.

And it further appearing that the Erie and Western Transportation Company, as trustee for the underwriters and owners of the cargo of the Conemaugh, has suffered damage by the said collision in the sum of $19,627.67, and that the Erie and Western Transportation Company, as owner of said propeller Conemaugh, has suffered damage by the said collision in the sum of $30,508.46, in all amounting to the sum of $50,136.13, it is further ordered, adjudged and decreed that the said Erie and Western Transportation Company, for itself, and as trustee, recover from the said Union Steamboat Company and its surety one-half of the aforesaid sum of $50,136.13, less one-half of the sum of $19,841.56, hereinbefore decreed to be paid by the said Union Steamboat Company to the intervening petitioners above named, as insurers of the cargo of the said steamer Conemaugh, amounting to the sum of $9,920.78, and the further sum of $2,170.90, being one-half of the damages sustained by said steamer New York, amounting to the sum of $12,976.38, with interest thereon at the rate of 5 per cent. per annum, from July 3, 1896, until paid; and that the said Union Steamboat Company and the American Surety Company pay into court, or to the proctors for said Erie and Western Transportation Company, the said sum of $12,976.38, with interest as aforesaid, and that in default thereof that it have execution therefor.

It is further ordered, adjudged and decreed that the said Erie and Western Transportation Company recover from the Union Steamboat Company, and its surety, the sum of $84.12, being one-half of the costs of the Supreme Court; $276.75, less one-half of the costs of the Circuit Court of Appeals, $192.63, and

further that said Erie and Western Transportation Company do recover from the Union Steamboat Company and its surety one-half of the costs in this court to be taxed, and that in default in the payment of any of said sums that the said Erie and Western Transportation Company have executions therefor against the said Union Steamboat Company and the American Surety Company.

"Exhibit D."

The District Court of the United States for the Eastern District of Michigan.

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|---|---|
| The Erie & Western Transportation Company, owner of the Propeller Conemaugh, *Libellant*, The British & Foreign Marine Insurance Company, Limited, The Insurance Company of North America, The Union Marine Insurance Company, and The Marine Insurance Company, Limited, *Intervenors*, *vs.* The Propeller New York, The Union Steamboat Company, *Claimant*. | *In Admiralty.* |

On reading and filing the mandate of the Supreme Court in this cause, bearing date the 22d day of January, in the year of our Lord one thousand nine hundred, and in obedience to said mandate and in consonance with the opinion of the Supreme Court therein, it is now ordered, adjudged and decreed, that the said Propeller Conemaugh and the said Propeller New York were both in fault for the collision set forth in the pleadings in this cause, and that the damages to said vessels and their owners resulting therefrom be equally divided between said Erie and Western Transportation Company and the said Union Steamboat Company:

And it is further ordered, adjudged and decreed, that the underwriters and owners of the cargo of said

Propeller Conemaugh recover the full amount of their damages against the said Union Steamboat Company and the American Surety Company of New York, its surety upon the bond or stipulation herein filed, with interest at the rate of seven per cent. per annum (that being the rate per annum that judgments and decrees bear in the courts of Michigan under the statute of said state), from the third day of July, 1896, until paid:

And it appearing that the above named intervenors were insurers of portions of said cargo and that they have suffered damages on account of said collision, as follows, to wit:

| | |
|---|---|
| The British and Foreign Marine Insurance Company, Limited, in the sum of.... | $2,321.84 |
| The Union Marine Insurance Company, in the sum of..... | 8,553.06 |
| The Marine Insurance Company, Limited, in the sum of..... | 916.57 |
| The Insurance Company of North America, in the sum of ..... | 7,950.09 |

It is further ordered, adjudged and decreed that the said intervenors severally recover from the said Union Steamboat Company and its surety their several damages aforesaid, amounting in all to the sum of $19,841.56, with interest thereon at the rate of 7 per cent. per annum from the 3d day of July, 1896, until paid, and that the said Union Steamboat Company and the American Surety Company pay into court, or to the proctors for said intervenors, the damages and interest aforesaid, and that in default thereof the said intervenors have executions therefor.

And it further appearing that the owners of said cargo and their underwriters, other than the inter-

venors, have suffered damage by said collision in the sum of $19,627.67, for which the said Erie and Western Transportation Company appears in this suit as trustee only, it is further ordered, adjudged and decreed that said trustee recover from the said Union Steamboat Company, and its surety, in trust, for the said owners of and underwriters on cargo, the aforesaid sum of $19,627.67, with interest thereon at the rate of 7 per cent. per annum from July 3, 1896, until paid, and that it have execution therefor.

And it is further ordered, adjudged and decreed that the said Erie and Western Transportation Company recover from the said Union Steamboat Company and its surety aforesaid, the sum of $13,219.52 (being one-half of the damage to said Conemaugh, less one-half of the damage suffered by the said New York in said collision), together with interest thereon at the rate of seven per cent. per annum from July 3, 1896;

And it is also decreed that the said libellant recover of the said claimant and its surety $276.75, as one-half of the costs of said cause in the Supreme Court, and also one-half of all costs of said cause in this court and in the United States Circuit Court of Appeals for the Sixth Circuit;

And it is further ordered that if default be made in the payment of any of said sums, executions issue therefor against the said claimant and its surety aforesaid.

HENRY H. SWAN,
*District Judge.*

I, Darius J. Davison, Clerk of the District Court of the United States for the Eastern District of Mich-

igan, do hereby certify that the foregoing is a true copy of a decree entered in the above entitled cause on the 24th day of March, 1900, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Detroit, in said district, this 27th day of March, 1900.

D. J. Davison,

[SEAL] *Clerk.*

"Exhibit E."

United States Circuit Court of Appeals, for the Sixth Circuit.

United States of America, } ss.
Sixth Judicial Circuit. }

*The President of the United States, To the Honorable the Judge of the District Court of the United States for the Eastern District of Michigan:*

Greeting: Whereas, lately in the District Court of the United States for the Eastern District of Michigan, before you, or some of you, in a cause between the Erie & Western Transportation Company, Libellant, and the Propeller New York, her engines, etc., respondent, wherein a decree was entered in favor of said libellant and against the Propellor New York, the Union Steamboat Company, claimant, as by the inspection of the transcript of the record of the said District Court which was brought into the United States Circuit Court of Appeals for the Sixth Circuit, by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears;

And Whereas, in the present term of October in the year of our Lord one thousand eight hundred and ninety-seven, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Sixth Circuit on said transcript of record and was argued by counsel;

On consideration whereof it is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be and the same

is hereby reversed with costs, and the cause is remanded to the court whence it came, with directions to dismiss the libel of the owner of the Conemaugh and the petition of the intervening insurance companies and to enter a decree *in personam* in favor of the owner of the New York against the owner of the Conemaugh for the agreed damage to the New York.

You therefore are commanded that such proceedings be had in said cause in conformity with the opinion and decree of this court as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the eleventh day of February, in the year 1898.

FRANK O. LOVELAND,
*Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.*

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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|---|---|
| Propeller "New York," v. Erie & Western Transportation Company | No. 461, Oct. Term, 1897. |

STATEMENT OF COSTS.

| | |
|---|---|
| Clerk's Costs | $ 33.80 |
| Cost Printing Record | 331.46 |
| Attorney docket fee | 20.00 |
| | $385.26 |

I, Darius J. Davison, Clerk of the District Court of

the United States for the Eastern District of Michigan, do hereby certify that the foregoing is a true copy of a mandate of the United States Circuit Court of Appeals for the Sixth Circuit, filed in my office on the 13th day of February, 1898, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Detroit in said District this 27th day of March, 1900.

D. J. Davison,
*Clerk.*

[SEAL.]

MAY 4 1900
JAMES H. McKENNEY,
Clerk.

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1899.**

No. 12, Original.

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## EX PARTE, IN THE MATTER OF THE UNION STEAMBOAT COMPANY,

**PETITIONER.**

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## Answer of the Judge of the District Court of the United States for the Eastern District of Michigan, to the Order to Show Cause why a Writ of Mandamus should not be issued.

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H. D. GOULDER,
F. H. CANFIELD,
Counsel.

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DETROIT:
Record Printing Co., Free Press Bldg., 11 and 13 Lafayette Ave.
1900.

IN THE

# SUPREME COURT OF THE UNITED STATES.

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IN THE MATTER of the petition of the Union Steamboat Company, Claimant, for a writ of mandamus directed to the District Court of the United States for the Eastern District of Michigan to set aside a decree in the case of the Erie & Western Transportation Company vs. The Propeller "New York," the Union Steamboat Company, Claimant.

*To the Honorable the Justices of the Supreme Court of the United States:*

In compliance with the order made by this Honorable Court, requiring this respondent to show cause why a writ of mandamus should not issue, which order is dated the 23d day of April, 1900, I, Henry H. Swan, Judge of the said District Court of the United States for the Eastern District of Michigan, do respectfully certify and return:

1. That the mandate of the Supreme Court in the case of the Erie & Western Transportation Company, libelant, the British & Foreign Marine Insurance Company, Limited, the Insurance Company of North America, the Union Marine Insurance Company and the Marine Insurance Company, Limited, Intervenors, vs. The Propeller "New York," the Union Steamboat Company, Claimant, mentioned in the petition upon which said order to show cause was granted, was filed in said District Court on the 24th of January, 1900.

2. That on the 17th day of March, 1900, said cause came on to be heard in the said District Court as to the decree to be entered in pursuance of said mandate, at which hearing all the parties were represented by their respective proctors; that the proctors for the said Erie & Western Transporation Company, libelant, and its cestuis que trust, the underwriters on cargo who had not separately intervened, and the proctors for the intervening insurance companies then submitted a proposed decree and asked that the same might be entered; that Exhibit "D," attached to said petition, is a copy of said proposed decree, except that the amount due to the said British & Foreign Marine Insurance Company, Limited, is $2,421.84 instead of $2,321.84, as stated in said Exhibit "D," and that the amount decreed to be paid to the said Erie & Western Transportation Company in its own right is the sum of $13,083.33 instead of $13,219.52, as stated in said Exhibit "D."

3. That at the same time there was submitted by the proctors for the petitioner, the said Union Steamboat Company, a proposed decree which they prayed might be entered. I certify and return that Exhibit "C," mentioned in said petition and attached thereto, is not a correct copy of said proposed decree, in this, that the rate of interest mentioned in said proposed decree, as presented to the court, is seven per cent per annum, and not five per cent per annum, as stated in said Exhibit "C," as will appear by reference to Exhibit "X," hereto attached and made a part of this return, and which is the identical proposed decree which said proctors presented to the Court and asked to have entered.

4. That upon presenting their said proposed decree the proctors for the said Union Steamboat Company stated to the Court that the words, "the courts of the State of Michi-

gan," used in the mandate of the Supreme Court, ought to be construed as meaning the admiralty courts of the United States sitting in Michigan, and that as decrees in said courts of the United States bear, usually, interest at the rate of six per cent, the interest to be allowed in the decree then proposed to be entered should be at the rate of six per cent, but conceded that the rate of interest should be seven per cent, if "the courts of the State of Michigan" mentioned in said mandate should be construed as meaning the courts of the State of Michigan.

5. That it was at no time contended in behalf of the said Union Steamboat Company that the rate of interest that "decrees bear in the courts of the State of Michigan" was five per cent, or that the decree in this cause should bear interest at that rate. On the contrary, as already stated, it was conceded in behalf of the said Union Steamboat Company that decrees in the courts of the State of Michigan, under the statute of said State, bear interest at the rate of seven per cent per annum.

6. That subsequent to the submission of said proposed decrees, and on the 21st day of March, 1900, the proctors for the Union Steamboat Company filed in said cause and presented to the Court a stipulation as to the several amounts constituting the damages in said cause, shown by the record in said cause, a copy of which it attached to said petition and marked Exhibit "B."

7. That after carefully considering said mandate and the opinion of the Supreme Court in said cause, and the arguments of the proctors for the respective parties, and knowing that the District Court had no power to vary said mandate or examine it for any other purpose than execution, or to add to it, or give any other or further relief; and that it was its duty simply to enter a decree as directed by said mandate and in consonance with said opin-

ion of the Supreme Court, and believing that the decree which was presented by the respective proctors for the Erie & Western Transportation Company, and the said intervenors was, in accordance with the said mandate and the said opinion of the Supreme Court, this respondent, on the 24th day of March, 1900, directed said decree to be entered, which was accordingly done.

8. That interest on judgments and decrees in the courts of the State of Michigan is provided for by sections (4865 and 4866) of the Compiled Laws of the State of Michigan of 1897, Vol. 2, which are as follows:

"INTEREST ON JUDGMENTS, VERDICTS, ETC."

"(4865) Sec. 6. Interest may be allowed and "received upon all judgments at law, for the recov- "ery of any sums of money, and upon all decrees in "chancery for the payment of any sums of money, "whatever may be the form or cause of action or "suit in which such judgment or decree shall be ren- "dered or made; and such interest may be collected "on execution, at the rate of seven per centum per "annum: Provided, That on a judgment rendered "on any written instrument, having a different rate, "the interest shall be computed at the rate specified "in such instrument, not exceeding ten per centum."

"(4866) Sec. 7. In all actions founded on con- "tracts express or implied, whenever in the execu- "tion thereof any amount in money shall be liquid- "ated or ascertained in favor of either party, by ver- "dict, report or referees, award of arbitrators, or by "assessment made by the clerk of the court or by "any other mode of assessment according to law, it "shall be lawful, unless such verdict, report, award "or assessment shall be set aside, to allow and re-

"ceive interest upon such amount so ascertained or "liquidated, until payment thereof, or until judg- "ment shall be thereupon rendered; and in making "up and recording such judgment, the interest on "such amount shall be added thereto, and included "in the judgment."

9. It is shown by the record in the cause and by the aforesaid stipulation, as well as by the decree which was presented by the proctors for said petitioner, that the said Erie & Western Transportation Company appears in said cause in its own behalf as owner of the "Conemaugh," claiming damages suffered in its own right, amounting with interest to July 3d, 1896, to the sum of $30,508.58; and as bailee or trustee of a portion of the "Conemaugh's" cargo, insured by underwriters who have not themselves intervened, the damage to that portion of the cargo, amounting to the sum of $19,627.67; and that the damages to the underwriters, who have intervened in said cause, amounts to the sum of $19,841.56, making the total cargo damage, with interest to July 3, 1896, $39,469.23, for which cargo damage, according to the opinion of this Honorable Court, the "New York" is held liable, although both vessels were in fault for the collision.

10. It further appears that if the said Union Steamboat Company is entitled to recoup from the Erie & Western Transportation Company one-half of what said steamboat company is held liable to pay on account of the damage to the "Conemaugh's" cargo, to wit: $19,734.61, as well as one-half of the damage to the "New York," to wit: $2,170.90, which is allowed by the decree entered, in making the division of damages as between the two steamers, it would result in what is, substantially, an affirmative decree in favor of said Union Steamboat Company against the said Erie & Western Transportation Company for the

sum of $6,651.28, besides interest from July 3d, 1896. Such a decree this respondent did not feel authorized to enter, for the reasons: *First.* That he was not directed to make such a decree by anything contained in the mandate of the Supreme Court, and that to enter such a decree, would be going beyond the mandate and in violation thereof; and, *Second*, because such a decree is not warranted by the pleadings in said cause, which, as shown by the record thereof, consist of the original libel filed by the said Erie & Western Transportation Company and the several petitions filed by the underwriters above named against the "New York;" and the several answers of the said Union Steamboat Company to said libel and said petitions. A cross-libel was also filed by said Union Steamboat Company against the propeller "Conemaugh" *in rem* and process therein prayed for against said propeller; but no process was issued nor was the court asked to enter any order requiring the said Erie & Western Transportation Company to give security for the claim set up in said cross-libel under General Admiralty Rule 53, nor does it appear that any copy of said cross-libel was ever served, or any proceeding whatever had under the same; nor has the said Union Steamboat Company by any pleading filed in the cause claimed to recover or recoup any sum from the said Erie & Western Transportation Company *in personam*, or asked for any decree against the said Transportation Company by way of recoupment or otherwise; nor has any proceeding been had under General Admiralty Rule 59, or otherwise to bring either the steamer "Conemaugh" or the Erie & Western Transportation Company into the suit to respond for any loss or damage resulting from the collision in said cause.

It clearly appears from the opinion of the Supreme Court in this case that "the underwriters on the 'Conemaugh's' cargo are entitled to recover to the full amount of

their damages against the 'New York,' notwithstanding the 'Conemaugh' may also be in fault for the collision." And neither in the mandate nor in the opinion is there any direction that any part of such cargo damages should be recouped by the said Union Steamboat Company from said Erie & Western Transportation Company. It was claimed by the proctors for said Erie & Western Transportation Company that the cargo was being carried under bills of lading, which exempted said company from liability to the underwriters on said cargo.

The liability of said Erie & Western Transportation Company for the damages resulting to said cargo has never been asserted by any pleading in the cause, nor has the question of its liability for such damages ever been litigated.

For the reasons herein stated, and believing that, under the decision of the Supreme Court in the case of the Juniata, 93 U. S., 337, cited and approved by the court in its opinion in this case, whatever the rights of the Union Steamboat Company, claimant of the "New York," may be against the said Erie & Western Transportation Company by reason of the payment to the underwriters on the cargo of more than one-half of their loss, they must be settled in another proceeding, and that it cannot be done in this litigation, this respondent declined to enter the decree proposed by the proctors for the said Union Steamboat Company. He believes the decree which was entered in the case to be in accordance with the mandate of the Supreme Court; but, if in this respect he has erred, he will cheerfully and promptly comply with any order or decree which this Honorable Court may make in the premises, as he desires to render full and exact obedience to its mandate.

All of which is respectfully submitted.

Dated May 2d, 1900.

(Sgd) Henry R. Lacombe,

District Judge.

## EXHIBIT "X."

The District Court of the United States for the Eastern District of Michigan—In Admiralty.

THE ERIE & WESTERN TRANSPORTATION COMPANY, Owner of the Propeller "CONEMAUGH,"
Libelant,
THE BRITISH & FOREIGN MARINE INSURANCE COMPANY, LIMITED,
THE INSURANCE COMPANY OF NORTH AMERICA,
THE UNION MARINE INSURANCE COMPANY, and
THE MARINE INSURANCE COMPANY, LIMITED,
Intervenors,

vs.

The Propellor "NEW YORK,"
THE UNION STEAMBOAT COMPANY,
Claimant.

On reading and filing the mandate of the Supreme Court in this cause, bearing date January 22, 1900, and in obedience to said mandate and in accordance with the opinion of the Supreme Court herein, it is now ordered, adjudged and decreed that the said propeller "Conemaugh" and the said propeller "New York" were both at fault for the collision set forth in the pleadings in this cause, and that the damages resulting therefrom to the said libelant, the owners of the cargo of the "Conemaugh" and underwriters thereon,

the intervening petitioners, and the claimant of the propeller "New York," be equally divided between the said Erie & Western Transportation Company and the said Union Steamboat Company.

It is further ordered, adjudged and decreed that the damages resulting from said collision, together with interest thereon to July 3, 1896, amount to the sum of $74,319.49, and are payable to the following named, and in the following proportion, viz:

| | |
|---|---|
| Union Steamboat Company, damage to "New York" | $ 4,341.80 |
| Erie & Western Trans. Co., damage to "Conemaugh" | 30,508.46 |
| Erie & Western Trans. Co., trustee for owners of cargo and underwriters other than intervenors | 19,627.67 |
| British & Foreign Marine Ins. Co., Lim., intervenors | 2,421.84 |
| Union Marine Insurance Company | 8,553.06 |
| Marine Insurance Company, Limited | 916.57 |
| Insurance Company of North America | 7,950.09 |

And it appearing that the above named intervenors were insurers of portions of the cargo of the "Conemaugh" and that they have suffered damages on account of said collision as follows, viz:

| | |
|---|---|
| British & Foreign Insurance Co. | $2,421.84 |
| Union Marine Insurance Company | 8,553.06 |
| Marine Insurance Company, Limited | 916.57 |
| Insurance Company of North America | 7,950.09 |

It is further ordered, adjudged and decreed that the said intervenors severally recover from the said Union Steamboat Company and The American Surety Company, its surety, their several damages aforesaid, amounting in all to the sum of $19,841.56, with interest thereon at the rate

of seven per cent per annum from the 3d day of July, 1896, until paid; and that the said Union Steamboat Company and The American Surety Company pay into Court, or to the proctors for the intervenors, the damages and interest aforesaid, and that in default thereof, the said intervenors have executions therefor.

And it further appearing that the Erie & Western Transportation Company, as trustee for the underwriters and owners of the cargo of the "Conemaugh," has suffered damage by the said collision in the sum of $19,627.67, and that the Erie & Western Transportation Company as owner of said propeller "Conemaugh," has suffered damage by the said collision in the sum of $30,508.46, in all amounting to the sum of $50,136.13, it is further ordered, adjudged and decreed that the said Erie & Western Transportation Company, for itself, and as trustee, recover from the said Union Steamboat Company and its surety, one-half of the aforesaid sum of $50,136.13, less one-half of the sum of $19,841.56, hereinbefore decreed to be paid by the said Union Steamboat Company to the intervening petitioners above named, as insurers of the cargo of the said steamer "Conemaugh," amounting to the sum of $9,920.78, and the further sum of $2,170.90, being one-half of the damages sustained by said steamer New York, amounting to the sum of $12,976.38, with interest thereon at the rate of seven per cent per annum, from July 3, 1896, until paid; and that the said Union Steamboat Company and The American Surety Company pay into Court, or to the proctors for said Erie & Western Transportation Company, the said sum of $12,976.38, with interest as aforesaid, and that in default thereof, that it have execution therefor.

It is further ordered, adjudged and decreed that the said Erie & Western Transportation Company recover from the Union Steamboat Company and its surety the sum of

$84.12, being one-half of the costs of the Supreme Court, $276.75, less one-half of the costs of the Circuit Court of Appeals, $192.63, and further that said Erie & Western Transportation Company do recover from the Union Steamboat Company and its surety, one-half of the costs in this Court to be taxed, and that in default in the payment of any of said sums, that the said Erie & Western Transportation Company have executions therefor against the said Union Steamboat Company and The American Surety Company.